

**PROPOSED CHANGES TO LOCAL RULES OF COURT  
EFFECTIVE JANUARY 1, 2005**

## **Chapter 9**

### **RULE 9.05**

#### **LAW AND MOTION**

~~A. Unless otherwise ordered, all noticed or ex parte motions must be presented to the judge to whom the case has been assigned for all purposes.~~

~~B. The court attorneys will receive all law and motion matters approximately seven days preceding the hearing date. To avoid wasting the time of the court attorneys, the court must be notified as soon as possible if a law and motion matter is to be continued or placed off calendar.~~

~~C. Any request to continue a law and motion matter must be made by the moving party with the agreement of the opposing party. The court may, in its discretion, grant or deny the parties' request to continue a law and motion matter. (Amended 7/1/02)~~  
(Repealed 1/1/2005)

### **RULE 9.11**

#### **FORMS TO BE ISSUED BY THE CLERK WHEN THE COMPLAINT IS FILED**

A. The Clerk must provide the following forms to the plaintiff when the complaint or initial pleading is filed:

1. Civil Case Management Policy ~~Statement~~
2. Notice of Assignment and Case Management Conference
3. Case Management Statement
4. ADR Policy Statement

B. The clerk must assign the case to a judge for all purposes and must calendar a Case Management Conference approximately 140 days later. (Amended 1/1/2005)

### **RULE 9.12**

#### **SERVICE OF SUMMONS AND COMPLAINT**

A. The plaintiff must serve the Summons and Complaint on all defendants within 60 days. The following documents must be attached to the complaint or served at the same time the complaint is served:

1. Civil Case Management Policy ~~Statement~~;
2. Notice of Assignment and Case Management Conference;
3. A blank Case Management Statement; and
4. The court's ADR Policy Statement.

(Amended 1/1/2005)

### **RULE 9.13**

#### **CASES TRANSFERRED FROM OTHER JURISDICTIONS**

A. Upon receipt of the file, the Clerk must assign the case to a judge for all purposes and must provide the plaintiff with a copy of the court's Civil Case Management Policy ~~Statement~~, a Notice of Assignment and Case Management Conference, a Case Management Statement, and the court's ADR Policy Statement  
(Amended 1/1/2005)

## **RULE 10.09**

### **PHOTOGRAPHING OR RECORDING COURT PROCEEDINGS**

All photographing, recording and broadcasting in the courtrooms of this Court ~~must~~ **will** be in accordance with California Rule of Court 980 as modified by the following:

#### **(a) Permission to Film Witness**

There ~~must~~ **will** be no photography, recording (audio or video), filming or broadcasting of the testimony of any witness not employed by a governmental agency without the permission of such witness and the court.

#### **(b) No Audio Broadcast**

There ~~must~~ **will** be no broadcast of audio recordings of court proceedings without permission of the court.

#### **(c) Media Rules**

Requests for media coverage must be submitted

- (1) To the Clerk of the Court five court days in advance,
- (2) For each appearance, and
- (3) In quadruplicate (original and 3: original for file, copies for the clerk to distribute to each side, and a copy for the media's file)

**Except as otherwise ordered by the court**

## **CHAPTER 11 CIVIL (PROBATE) RULES PART ONE GENERAL PROCEDURAL GUIDE**

## **RULE 11.102**

### **ADDRESSES AND TELEPHONE NUMBERS**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

County Government Center  
San Luis Obispo, CA 93408

<b>Office</b>	<b>Address</b>	<b>Telephone</b>
Clerk	County Government Center Room 385 San Luis Obispo, CA, 93408	(805) 781-5242
Court Investigator	1070 Palm Street	(805) 781-5424
<a href="#">Probate Examiner</a>	<a href="#">1070 Palm Street</a>	<a href="#">(805) 781-5424</a>
Preapproved Matters	(Recording) (Web Site)	(805) 781-5178 <a href="http://www.slocourts.net">www.slocourts.net</a>
(Amended 1/1/2005)		

## **RULE 11.105**

### **FORM OF PAPERS PRESENTED FOR FILING**

(a) Papers presented for filing with the Clerk must conform to California Rules of Court 201.

~~(b) Use of forms which are ADOPTED by the Judicial Council are mandatory. The latest printed forms which have been APPROVED by the Judicial Council must be used where applicable. If the approved forms cannot be used without substantial alteration, counsel are requested to prepare their own documents using the printed forms as a guide. (Amended 1/1/2005)~~

(c) All filings must include an original and one (1) copy if petitioner/counsel require a conformed copy.

(d) Unless petitioner/counsel provides the Clerk with a stamped, self-addressed envelope, copies of filed documents will be placed in a will call-pick up folder at the Clerk's office. (Amended 7/1/02)

## **RULE 11.107**

### **SIGNING AND VERIFICATION OF PLEADINGS**

~~(a) Pleadings, reports and accounts must be signed by the attorney and each personal representative, trustee, guardian or conservator. Such filings must be verified by a personal representative, trustee, guardian or conservator personally and not by the attorney.~~

~~(b) If the petitioner, objector or respondent is not a fiduciary appointed in the proceeding and is absent from the county or for some other reason unable to sign or verify the petition, objection or response, the person's attorney may sign or verify the same as set forth in Probate Code Sec. 1023 (Repealed 1/1/2005)~~

## **RULE 11.108**

### **AMENDMENTS TO AND AMENDED PLEADINGS**

#### **~~(a) Amended Pleading~~**

~~An amended pleading is a pleading which supersedes the original thereof and speaks only of things which occurred either before or concurrently with the commencement of the action; it may be allowed "of course" or upon motion. An amended pleading must be calendared, posted and noticed in the same manner as the pleading it supersedes. An amended pleading must be clearly designated as amended in the caption on the first page of the pleading.~~

#### **~~(b) Amendment to Pleading~~**

~~An amendment to a pleading is the correction of an error committed. Its purpose is to correct, improve or rectify something deficient or defective in the original pleading, not to substitute a new for an old. Copies must be served by counsel on all parties who were served with the initial pleading if there is a substantive change. The amendment will not be calendared separately but will be heard on the date and time set for hearing on the initial pleading. An amendment to a pleading must designate the pages and lines of the pleading being amended. An amendment must not be made by alterations on the face of a pleading except with permission of the Court.~~

#### **~~(c) Supplemental Pleading~~**

~~A supplemental pleading is one alleging facts material to the action occurring since the commencement of the action. Leave of Court must be obtained prior to the filing of a supplemental pleading. A supplemental pleading must be calendared, posted and noticed in the same manner as an original pleading. A "Supplement to a Pleading" does not exist and will not be accepted. (Amended 7/1/02) (Repealed 1/1/2005)~~

## **RULE 11.110**

### **CONTINUANCES**

- (a) The continuance policy of this Court in probate matters is liberal, but unexplained or unnecessary successive continuances must cause the matter to be taken off calendar and require the same to be renoticed. In uncontested matters, counsel may request a continuance by telephone to the Probate Clerk. Pursuant to Probate Code ~~See~~ § 1205, if a hearing is continued, no further notice is required unless ordered by the court.
- (b) Matters that require additional time to cure defects identified by the Court or Probate Examiner may be continued for a period sufficient to cure the defect. In the event that the defect is not cured by the continued hearing date, the matter may be ordered off calendar unless there is a personal appearance by counsel with a request to the court for a further continuance. (Amended 1/1/2005)

## **PART TWO NOTICES**

### **RULE 11.204**

#### **NOTICE BY PUBLICATION OF NOTICE OF PETITION TO ADMINISTER ESTATE**

~~The published notice of Petition to Administer Estate is sufficient to include only those instruments which are offered for probate and specifically referred to in the petition for which the notice is given. Any other will or codicils not specifically mentioned in the petition must be presented to the Court in an amended petition or second petition, and a notice of hearing must be published.~~ See Appendix A for newspapers of general circulation in San Luis Obispo County. (Amended 1/1/2005)

## **PART THREE APPOINTMENT OF EXECUTORS AND ADMINISTRATOR**

### **RULE 11.303**

#### **INDIVIDUALS TO BE NAMED IN THE PETITION**

In the petition for letters, each of the following must be listed and named:

- (a) Each heir of the decedent, so far as known to or reasonably ascertainable by the petitioner, (including those who might be heirs by virtue of Probate Code Secs. 21114, 21115 and 6400 et seq.), setting forth their names, age addresses and relationships to the decedent.
- (b) Each devisee and executor named in any will being offered for probate even if the gift to such person or the appointment of such executor has apparently been revoked.
- (c) Trust beneficiaries, the trustee of a trust or guardian nominated in a will, and any other known trustee or guardian.
- (d) If the decedent left no spouse or issue, the heirs of a predeceased spouse who would inherit as provided by Probate Code ~~See~~ §6400 et seq.
- (e) If an individual identified in the petition for letters is deceased, the petition must set forth the date of death of that individual. (Amended 1/1/2005)

#### **RULE 11.304**

##### **COPY OF WILL TO BE ATTACHED TO PETITION FOR PROBATE**

(a) A petition for letters must have ~~a photocopy~~ an attested copy of the will attached at the time of filing the petition. The original will must be submitted at the time of filing unless previously lodged with the Court for safekeeping. (Amended 1/1/2005)

(b) If the will is holographic, in addition to a photocopy, a typewritten copy of the will must also be attached to the petition. (Eff. 7/1/00)

#### **RULE 11.306**

##### **BOND**

(a) Bond must be required in all cases, except as otherwise provided by statute. (Probate Code ~~Sees.~~ §§8480 and 8481(a) (1)).

(b) If a verified petition for letters alleges that all beneficiaries or heirs have waived the filing of a bond, and the petitioner requests appointment without bond, such waiver(s) must be in writing and timely filed prior to the hearing. Waiver of the bond by heir(s) or beneficiary(s) pursuant to Probate Code ~~See.~~ §8481 (a) (2) will be considered by the Court and permitted on a case by case basis.

~~(c) An executor nominated to serve without bond who is a nonresident of California may nevertheless be required to post such bond as the Court may require. Probate Code Sec. 8571.~~

~~(d) Upon the filing of the Inventory and Appraisal, the personal representative or the attorney for the estate must declare on the face thereof whether bond is required and whether the amount posted is adequate. If the bond is insufficient, the personal representative must immediately obtain and file an additional bond, thereby increasing the bond to the amount required by Probate Code Sec. 8482.~~

(e) When a reduction of bond proceeding is initiated, counsel must obtain a proof of deposit confirming the deposit of securities and/or money subject to removal from the depository only upon order of the Court. Such proof must be filed with the Clerk before the reduced bond is filed. Judicial Council forms: MC-355, Order To Deposit Money Into Blocked Account, and MC-356, Receipt And Acknowledgment Of Order For The Deposit Of Money Into Blocked Account are available at the Clerk's Office or can be found on the California Courts website at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov). (Amended 1/1/2005)

### **PART FOUR OTHER MOTIONS AND PETITIONS**

#### **RULE 11.401**

##### **PETITION FOR EX PARTE ORDER**

(a) If because of the apparent emergency nature of an application, the Court elects to consider the matter ex parte, but the need for an opportunity to be heard is apparent, the Court will require moving counsel to notify all parties no later than 10:00 a.m. the court day before, absent a showing of exceptional circumstances, of the nature of the application to counsel who represent the other interested parties, or in the absence thereof to the other interested parties themselves. Any such petitions must comply with California Rules of Court 379(b). Before the hearing is held, moving counsel must submit a declaration to the Court setting forth facts relating to the efforts to give such notice, if any, or facts supporting the conclusion that it was impossible to give such notice.

(b) An ex parte order will not be granted unless accompanied by a petition (or affidavit where applicable) containing facts to justify granting the prayer.

~~(c) All petitions for ex parte orders must contain an allegation that no request for Special Notice has been filed. If any such notice has been filed, an ex parte order will not be considered unless accompanied by a properly executed waiver of notice.~~

(d) Petitions for an ex parte order for sale of stock or personal property must allege whether the property is specifically bequeathed. If bequeathed, the consent of the specific legatee to the sale must accompany the petition. (Amended 1/1/2005)

#### **RULE 11.405**

#### **PROCEEDING FOR SPOUSAL PROPERTY TRANSACTION**

As to petitions pursuant to §3100 et seq.:

(a) The petition must be supported by a declaration of a licensed physician or licensed psychologist within the scope of his or her licensure as to the capacity of the non-petitioning spouse (§810 et seq.).

(b) Counsel will be appointed for the nonpetitioning spouse if the petition proposes a substantial transfer to the petitioner.

(c) When the petition is predicated upon the nonpetitioning spouse's qualification for Medi-Cal benefits, notice shall also be given to the Director of the California Department of Health Services.

(d) In petitions to transfer assets, related to Medi-Cal eligibility, the petitioner shall provide the court with schedules showing such calculations as would be required in an administrative hearing to the extent that the Community Spouse Resource Allowance or the Minimum Monthly Maintenance Needs Allowance would be in issue. The court will not make orders modifying the Community Spouse Resource Allowance nor the Minimum Maintenance Monthly Needs Allowance but may make findings as to the proper amounts as needed to support the order.

(e) The court will not issue general support orders in petitions under §3100 et seq.  
(Eff. 1/1/2005)

### **PART SIX INVENTORY AND APPRAISAL**

#### **RULE 11.602**

#### **STATEMENT REGARDING - BOND ON INVENTORY AND APPRAISAL**

~~The personal representative or the attorney for the estate must declare on the face of the Inventory and Appraisal whether bond is required and whether the amount posted is adequate. If the bond is insufficient, the personal representative must immediately file an additional bond, thereby increasing the bond to the amount required by Probate Code Sec. 8482.~~

(Repealed 1/1/2005)

## **PART SEVEN CREDITORS CLAIMS**

### **RULE 11.703**

#### **REQUIRED ACTION**

~~All filed claims must be acted on by the personal representative of the estate and it is the duty of the attorney for the estate to see that all claims filed are ultimately approved or rejected, in proper form, duly verified, and contain sufficient detail to enable the Court to act on them. (Repealed 1/1/2005)~~

### **RULE 11.704**

#### **LISTING OF CREDITORS' CLAIMS**

~~In a report accompanying an account or in a report where an accounting is waived, it is not sufficient to merely allege that all claims have been paid. The claims presented must be listed and show: the name of each claimant, the amount claimed, the date presented, the date allowed, the date paid if the claim has been paid and the amount paid. If any claim has been rejected, the date of service of notice of rejection of claim, if such notice was given, must be stated; and any known suit on the rejected claim must be identified. (Repealed 1/1/2005)~~

### **RULE 11.811**

#### **BOND ON SALE OF REAL PROPERTY**

~~—— (a) — Petitions for confirmation of sale of real property must set forth the amount of bond in force at the time of sale and the amount of property in the estate which should be covered by bond. If no additional bond is required, or if bond is waived, that fact should be alleged. A secured promissory note taken as part of the consideration is personal property and an additional bond must be fixed in the amount of such note plus whatever cash is paid.~~

~~—— (b) — If the sale proceeds are to be deposited in whole or part into a blocked account, the details must be set forth in the petition for confirmation of sale. Judicial Council Forms: MC-355, Order to Deposit Money Into Blocked Account, and MC-356, Receipt And Acknowledgment Or Order For The Deposit Of Money Into Blocked Account are available at the Clerk's Office or can be found on the California Courts website at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov). (Amended 7/1/02) (Repealed 1/1/2005)~~

## **PART NINE ACCOUNTS AND REPORTS**

### **RULE 11.903**

#### **WAIVER OF ACCOUNT**

~~(a) — The Court will approve a distribution without an account only when all of the following conditions have been met as to each person entitled to distribution from the estate: the person has executed and filed a written waiver of account or a written acknowledgment that the person's interest has been satisfied; and the conditions set forth in Probate Code Sec. 10954 have been satisfied.~~

~~—— (b) — Notwithstanding the waiver of account, the personal representative must file a final report of administration at the time the final account would otherwise have been required. Said final report must include the amount of fees and commissions paid or payable to the personal representative and to the attorney and must set forth the basis for determining the amount. See 11.1003.~~

~~(Repealed 1/1/2005)~~

## PART TEN FEES AND COSTS

### RULE 11.1001

#### FEES AND COMMISSIONS IN GENERAL

(a) Fees, commissions and compensation to fiduciaries and their attorneys must be just and reasonable in amount. The Court will make a determination of what is just and reasonable upon the basis of the information provided to the Court in a petition requesting allowance of fees or commissions. In this respect, there must be no distinction between decedent's estates, guardianships, conservatorships or trusts which are subject to court supervision or are otherwise before the Court

~~(b) Other than for statutory fees and commission in probate matters, the petition requesting allowance of fees or commissions must include a description of the nature of the services rendered with particularity, the time expended thereon, the person who performed the service, and the amount of compensation requested for each service.~~  
The Court will consider, but not be bound by, an agreement for extraordinary fees between the attorney and the client. (Amended 1/1/2005)

### RULE 11.1002

#### FEES AND COMMISSIONS IN ADVANCE

##### (a) Decedent's Estates

~~Payment of any commissions or fees to the personal representative or the attorney in advance of a Court order is not authorized, not even payment of statutory fees or commissions. Representatives or attorneys violating this prohibition may be surcharged such reasonable sums as the Court in its discretion shall fix.~~

~~———— A petition for partial allowance on statutory compensation and/or compensation for extraordinary services filed prior to the petition for final distribution, must comply with the requirements of Probate Code Sec. 10830 and/or 10832, and must contain a recital of the work actually completed. Ordinarily the last twenty-five (25) percent of the statutory compensation and/or compensation for extraordinary services will not be allowed prior to approval of the final accounting; however, upon a proper showing that it would be beneficial to the estate or to the distribution (for example, reduction of income taxes in a given fiscal period), the twenty-five (25) percent reserve may be reduced or dispensed with.~~

A petition for partial allowance on compensation for extraordinary services, filed prior to the petition for final distribution, must be consistent with the requirements set forth for statutory fees in California Rule of Probate Court 7.701. Ordinarily the last twenty-five (25) percent of statutory compensation and/or compensation for extraordinary services will not be allowed prior to approval of the final accounting; however, upon a proper showing that it would be beneficial to the estate or to the distribution (for example, reduction of income taxes in a given fiscal period), the twenty-five (25) percent reserve may be reduced or dispensed with.

(Amended 1/1/2005)



## **RULE 11.1003**

### **FEES AND COMMISSIONS DECEDENT'S ESTATES**

~~(a) — In decedent's estates, when no compensation is provided in the will, the personal representative must be allowed statutory fees and commissions set forth in Probate Code Sec. 10800.~~

~~(b) — Where an accounting is waived, the statutory commission and fee is limited to the inventory value of the estate plus or minus gains or losses on sales.~~

~~(c) — In a petition for distribution, whether or not accompanied by an accounting, there must be set forth the basis upon which fees are requested and a calculation of the statutory compensation of the personal representative and the attorney. See Appendix C for suggested form of request.~~

(d) Statutory fees and commissions will not be allowed for services rendered with respect to assets not subject to probate such as life insurance proceeds or annuities paid to a named person, or termination of life estates or joint tenancy. (Amended 1/1/2005)

## **RULE 11.1005**

### **EXTRAORDINARY FEES AND COMMISSIONS IN ESTATES**

~~(a) — Extraordinary fees and commissions may be allowed to the personal representative or attorney for such matters as sales, leases, borrowing, litigation (including contested probate matters), tax matters (including preparation of returns, audits and tax litigation), operating a business, heirship proceedings and the performance of any other act resulting in extraordinary benefit to the estate or requiring an extraordinary expenditure of the time or other special services as may be necessary for the personal representative or attorney to perform.~~

~~(b) — It is the policy of the Court to allow compensation which would be paid by persons competent to contract for themselves and as are reasonable and customary in the community for such services. In order to assist the Court in its determination, each item that constitutes an extraordinary service must be individually stated in the petition with a specific fee request for each such service. Following are suggested, but not exclusive, guidelines of the Court to be used in making its determination:~~

~~(1) — The benefits which inured to the estate.~~

~~(2) — Amount of money or value of property involved in the transaction.~~

~~(3) — Whether the matter was routine or involved a unique matter of substantial legal or practical difficulty.~~

~~(4) — Knowledge and experience of personal representative or attorney and how this relates to the extraordinary services.~~

~~(5) — Whether an expert was retained in connection with the rendering of particular services, such as a broker or certified public accountant.~~

~~(6) — Duration of the probate administration.~~

~~(7) — A detailed description of services rendered by date.~~

~~(8) — A detailed description of any legal research required on a unique or different issue.~~

~~(9) — The time devoted to the services described.~~

~~(10) — Amount of the statutory fee and the time required to administer all matters pertaining to the estate. (Repealed 1/1/2005)~~

## **RULE 11.1006**

### **COMPENSATION IN GUARDIANSHIPS, CONSERVATORSHIPS AND TRUSTS**

~~(a) — The Probate Code provides for just and reasonable compensation for guardians, conservators, trustees and their attorneys. The Court will consider the same factors set forth in Rule 11.1005, pertaining to allowance of extraordinary fees and commissions, to the extent the same are relevant, in determining such compensation.~~

~~(b) — When compensation is requested by a guardian, conservator, or trustee, the Court will require the guardian, conservator, or trustee, to set forth in detail, the type and nature of the services provided, the hours expended, and the date the services were performed.~~

~~(c) — No petition for fees will be considered until the Inventory and Appraisal has been filed. Any petition for fees made pursuant to Probate Code Sec. 2640 before the filing of the first accounting must contain a complete and detailed statement of the services rendered which support the fee requested.~~

~~(d) — The additional powers granted to a conservator or guardian under Probate Code Sec. 2591(q) do not confer authority for the conservator or guardian to pay fees to their attorney of record without first obtaining prior court approval. (Amended 1/1/2005)~~

## **RULE 11.1007**

### **"ONE - FEE" RULE**

~~Unless approved by the Court in advance as being to the advantage, benefit and best interest of the estate, minor or conservatee, an attorney who receives a fiduciary's commission must not be awarded an attorney's fee or be allowed to share in any attorney's fees which may be paid to that attorney's law firm. In situations where the one-fee rule is applicable, an agreement which shows compliance with the rule must be filed with the Court. (Repealed 1/1/2005)~~

## **RULE 11.1008**

### **NOTICE TO PRIOR REPRESENTATIVE OR ATTORNEY**

~~If there has been a change of personal representative or fiduciary or a substitution of counsel, notice of hearing must be given to such prior representative, fiduciary or counsel of any petition in which fees or commissions are requested by the present personal representative, fiduciary or counsel unless:~~

~~(1) — A waiver of notice executed by the prior personal representative, fiduciary or counsel is on file;~~

~~(2) — An agreement on the allocation of fees and/or commissions is on file or included in the petition; or~~

~~(3) — The file and the petition demonstrate that the fees and/or commissions of the prior personal representative, fiduciary, or counsel have been previously provided for and allowed by the Court. (Repealed 1/1/2005)~~

## **PART ELEVEN**

### **DISTRIBUTION AND DISCHARGE**

## **RULE 11.1102**

### **REQUIRED ALLEGATIONS IN PETITION FOR PRELIMINARY AND FINAL DISTRIBUTION**

In addition to other items required by law, a petition for preliminary and final distribution must contain the following:

~~(a) — A full and complete description of all assets on hand, including the legal description and common address of real property. The descriptions may either be set forth in the body of the petition, or by an attached schedule incorporated by reference.~~

(b) An allegation as to the character of the property, whether separate or community, in all cases where its character may affect distribution.

(c) Facts specifically showing the entitlement of each recipient to the portion of the estate to be distributed to him or her. This must also include information concerning predeceased children and in the case of intestate succession, a list of heirs to permit the Court to determine if the laws of intestate succession have been properly applied. A general allegation that the estate is to be distributed in accordance with the terms of the will is not sufficient.

(d) The name of each distributee. State whether the distributee is an adult or minor. If the distributee is a minor, the age and date of birth must also be listed and a guardian, trustee, custodian or parent identified.

(e) A computation of attorney's fees and personal representative's commissions requested, or a statement of the waiver of such compensation. See Appendix C.

(f) An allegation disclosing the existence or non-existence of any family or affiliate relationship between the fiduciary and any agent hired by the fiduciary during the account period as required by Probate Code §1064(a)(4). (Amended 1/1/2005)

#### **RULE 11.1104**

##### **DISTRIBUTION TO NONRESIDENT BENEFICIARIES**

If a distribution is to be made to a non-resident beneficiary, and if the assets of the estate exceed ~~\$400,000~~ \$1,000,000, and more than ~~\$100,000~~ \$250,000 is to be distributed to a non-resident beneficiary, the certificate of the California Franchise Tax Board required by ~~See~~ §19513 of the Revenue and Taxation Code must be filed before the order of distribution will be signed. (Amended 1/1/2005)

#### **RULE 11.1105**

##### **DISTRIBUTION TO A TRUST**

(a) If a distribution is to be made to a trust, a statement by the trustee of trustee's willingness to accept the property under the terms of the trust must be filed with the petition for distribution. Lacking this, a declination to act must be filed, in which case it should be accompanied by a petition by the personal representative for the appointment of a substitute trustee.

(b) If the will provides for distribution of the estate, or portion thereof, to a trust created by the will, the trust provisions set forth in the will must be set forth verbatim in the petition and order for distribution, whether or not an accounting is made. (Amended 1/1/2005)

### **PART THIRTEEN PETITIONS SETTING ASIDE ESTATES, PROPERTY PASSING OR BELONGING TO SURVIVING SPOUSE, AND COLLECTION OF SMALL ESTATES**

#### **RULE 11.1302**

##### **PETITION RELATING TO PROPERTY PASSING OR BELONGING TO SURVIVING SPOUSE**

~~In addition to the allegations required by Probate Code Sec. 13651, a petition that administration of all or part of the estate is not necessary because all or part of the estate is property passing or belonging to the surviving spouse should contain the facts upon which the petition is based.~~

(a) If the basis for determining that property should pass or be confirmed to the surviving spouse is that the property is community property or quasi-community property. In addition to the allegations required by Probate Code §13651, the following information should be included in the spousal property petition:

- (1) Date and place of marriage;
- (2) Ownership of any real and personal property on date of marriage and a description and approximation of values;
- (3) Decedent's net worth at time of marriage;
- (4) Decedent's occupation at time of marriage;
- (5) A description of any property acquired after date of marriage by gift, devise, descent, proceeds of life insurance or joint tenancy survivorship, and dates of receipt and approximation of values;
- (6) The identification of any property described in 2 or 5 above which is still a part of this estate;
- (7) A copy (preferably a photocopy, showing signatures) of any document establishing the character of the property; and
- (8) Any additional facts upon which the claim that property is community or quasi-community property is based. (Amended 1/1/2005)

## **PART FOURTEEN INDEPENDENT ADMINISTRATION**

### **RULE 11.1401**

#### **GENERAL**

With respect to matters transacted pursuant to the provisions of the Independent Administration of Estates Act contained in Probate Code ~~See:~~ §10400 et seq., the following policies must apply:

(1) In any petition for distribution, a schedule of claims must be included as part of the petition, the name of the claimant, the amount claimed, the date presented, the date allowed, the date paid if the claim has been paid and the amount paid must be set forth. If any claim has been rejected, the date of service of notice of rejection of claim, if such notice was given, must be stated; and any known suit on the rejected claim must be identified.

(2) Although preliminary distribution may be made without accounting, sufficient facts must be set forth in the petition to allow the Court to ascertain that the estate is solvent.

(3) In any petition for distribution, all independent acts taken without prior Court approval must be set forth and described with particularity, and an allegation made that the 15-day notice of proposed action with attached notice of proposed action and proof of service must be filed with the Court. The petition for distribution must indicate whether or not objections or consents to the proposed action were served. If certain acts have been properly reported in a prior distribution, they need not be repeated. (Amended 1/1/2005)

## **PART FIFTEEN TRUSTS**

### **RULE 11.1503**

#### **TRUSTEES' ACCOUNTS**

~~Accounts filed by trustees must conform to the requirements of Rule 11.901 and must set forth specifically the period covered by the account. If the trust res was formed in whole or in part by the distribution from an estate, the first account should clearly reconcile the amount first chargeable with both the decree of distribution and the trustees' receipt filed with the estate from which the property was received. (Repealed 1/1/2005)~~

### **RULE 11.1504**

#### **BENEFICIARIES TO BE LISTED IN PETITION**

~~All petitions filed under Probate Code Sec. 17200 involving a testamentary trust or inter vivos trust must set forth the names and last known addresses of all trustees, all beneficiaries required to receive notice under Chapter 2 (commencing with Sec. 15800) of Part 3 of the Probate Code, and the Attorney General if the petition relates to a charitable trust. (Repealed 1/1/2005)~~

### **RULE 11.1505**

#### **NOTICE TO BENEFICIARIES**

~~Petitions filed under Probate Code Sec. 17200 require appropriate notice be given to all of the following persons:~~

- ~~\_\_\_\_\_ (a) All trustees;~~
- ~~\_\_\_\_\_ (b) All beneficiaries required to receive notice under Chapter 2 (commencing with Sec. 15800) of Part 3 of the Probate Code;~~
- ~~\_\_\_\_\_ (c) The Attorney General if the petition relates to a charitable trust, unless the Attorney General waives notice.~~
- ~~\_\_\_\_\_ (d) Notice must be given at least thirty (30) days before the time set for the hearing on the petition. Probate Code Sec. 17203. (Repealed 1/1/2005)~~

## **PART SIXTEEN GUARDIANSHIPS**

### **RULE 11.1601**

#### **PETITION FOR APPOINTMENT OF GUARDIAN**

(a) A petition for appointment of guardian of the person or estate of a minor or minors must be in the form approved by the Judicial Council and must contain all the information set forth in Probate Code ~~See~~ §1510. If the petition is for guardianship of the person of a minor, and the petitioner is a non-relative, the petition must conform to the requirements set forth in Probate Code ~~Sees~~ §1510 and 1541; and appropriate notice given as set forth in Probate Code ~~Sees~~ §1511 and 1542.

(b) The petition must set forth with specificity the reason for the necessity of the establishment of a guardianship. (Amended 7/1/2003)

(c) The petition must state whether or not the minor is a ward or dependent child of the juvenile court or adoption proceedings are undertaken and whether or not any custody proceeding has been filed in respect to the minor. If the minor is the subject of a juvenile court proceeding or custody proceeding, appropriate notice of the guardianship proceeding must be given to the interested parties in such other proceedings. All guardianship proceedings involving a dependent child or ward of the Juvenile Court must be set for hearing before the Juvenile Court.

(d) When a petitioner is a relative, a copy of the petition and other papers filed therewith must be provided to the Court Investigator. See Rule 11. 1809. A copy of the petition only, must be provided to the San Luis Obispo Department of Social Services Child Protective Services. When the petitioner is a non-relative, a copy of the petition and other papers filed therewith must be provided to the San Luis Obispo County Department of Social Services but not to the Court Investigator.

(e) With the filing of a petition for appointment of a guardianship of the person of the minor or the person and estate of the minor, petitioner must file a completed Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). (Judicial Council Form FL-105/GC-120). (Amended 1/1/2005)

## **PART SEVENTEEN CONSERVATORSHIP**

### **RULE 11.1705**

#### **SUBSTITUTED JUDGMENTS IN CONSERVATORSHIPS**

(a) A trust created by order of the probate court for the benefit of a minor or incompetent adult pursuant to Probate Code §2580 et seq., 3100 et seq. or 3600 et seq. will ordinarily be required to remain under the continuing jurisdiction of the court and contain the following provisions to be effective during the lifetime of the incompetent adult or during the minor's minority.

- (1) Trustee shall post bond for assets and income of the trust.
- (2) Trustee shall file accounting consistent with the requirements of Probate Code §2620 and Probate Code §1060 et seq.
- (3) Prior court approval shall be required for investments other than those listed in Probate Code §2574(a).
- (4) Trustee shall obtain prior court approval for gifting, hypothecation, borrowing, loans, and sales of assets as would be required by a guardian or conservator of the estate.
- (5) Prior court approval shall be required for payments of fees to attorneys, conservators, guardians and trustees.
- (6) The trust shall pay for court approved court investigation costs, fees for guardians, conservators, their attorneys and court appointed counsel as well as other costs of administration approved by the court.
- (7) There shall be no "no contest" clause in the trust instrument.

(b) The probate court will ordinarily appoint an attorney as guardian ad litem to represent the interests of the minor or incompetent adult in the proceeding to establish the trust.

(c) Where an inter-vivos trust has been established for the benefit of the proposed Conservatee or Ward before the filing of a petition to appoint a Conservator or Ward and where the Trustee and the Conservator or Guardian, as the case may be, are the same individual, the approval of a petition for Conservatorship or Guardianship may be conditioned upon satisfaction of the requirements set forth in this Local Rule. (Eff. 1/1/2005)

**PART EIGHTEEN**  
**PROVISIONS COMMON TO GUARDIANSHIPS AND CONSERVATORSHIPS**

**RULE 11.1806**

**ACCOUNTS**

- (a) An accounting must be filed by the guardian or conservator:
- (1) At the expiration of one year from the time of appointment and thereafter not less frequently than bi-annually unless otherwise ordered by the Court.
  - (2) Upon the ward's 18th birthday.
  - (3) Upon death of the ward or conservatee.
  - (4) Upon death, removal, or resignation of the guardian or conservator.
  - (5) Upon any other termination of the guardianship or conservatorship.
  - (6) At such other times as the Court may order.
- (b) Accounts must contain the information required in Probate Code Secs. 2620 and 1060 and must be in the form of accounts for decedents' estates as set forth in these rules. If the account shows expenditures not authorized by prior order of the Court, the guardian or conservator must provide supporting declarations or testimony with respect to such expenditures before the account must be approved. An explanation of any unusual items appearing in the account should be set forth in a statement included in the petition and account.
- (c) The guardian or conservator must set forth in a separate schedule all debts of the ward or conservatee known or anticipated by the guardian or conservator.
- (d) The conservatee's current residence address must be set forth in each report or account.
- (e) The petition and account must set forth a statement of the age, health/physical condition, activity/treatment program and whereabouts of the ward or conservatee.
- (f) Where there are multiple wards or conservatees joined in a single proceeding an account must reflect a separate accounting for each of the respective wards or conservatee.
- (g) All copies of the account (original, copy for ~~Court Investigator~~ Probate Examiner, and copies to be endorsed and returned to attorney) must be forwarded to the ~~Court Investigator~~ Probate Examiner. After completing his review, the ~~Court Investigator~~ Probate Examiner must file the account and set the hearing on a date mutually agreed upon with counsel. Counsel may set the account for hearing if the ~~Court Investigator~~ Probate Examiner fails to complete his review and set the same for hearing within thirty (30) days of receipt from petitioner or his counsel.
- (h) All Conservatorship and Guardianship accounts must be supported by original financial institution statements as required by Probate Code §2460(c). Balances shown in the accounting, if different from the balances shown in the financial institution statement, must be reconciled in the account. (Amended 1/1/2005)

**RULE 11.1807**

**REPORT BY COURT INVESTIGATOR OR PROBATE EXAMINER**

- (a) The Court Investigator or Probate Examiner must review each account filed to ascertain the correctness of the account and whether the assets are being utilized in the best interests of the conservatee or ward. The Court Investigator or Probate Examiner must file a report of his or her findings with the Court.



(b) The Court Investigator's assessment shall be charged by the Court Probate Examiner for all account reviews that do not require a home visit by the Court Investigator. In the event that a home visit is conducted, the assessment shall be charged by the Court Investigator only. (Amended 1/1/2005)

#### **RULE 11.1808**

##### **WAIVER OF ACCOUNTING -- WHEN PERMITTED**

(a) The Court does not favor the waiver of any final accounting by a guardian or conservator. A minor may not waive an accounting. A minor who has attained majority will not be permitted to waive a final accounting except upon a showing of unusual circumstances, and then only if the minor is present in Court at the hearing on the petition for termination without an accounting.

(b) In the event that the court has dispensed with the necessity of an accounting pursuant to Probate Code §2628, the fiduciary must file a final report that contains allegations concerning whether the estate continued to satisfy all of the conditions required by Probate Code §2628(b) in lieu of filing a final account. The final report must set forth the assets on hand and the proposed disposition of those assets. Notwithstanding any order dispensing with the necessity of the account, the Court may, under appropriate circumstances, require the filing of an account. (Amended 1/1/2005)

#### **RULE 11.1814**

##### **SPECIAL NEEDS TRUSTS**

(a). With respect to Special Needs Trusts, the following must be included in the trust:

- (1) Provisions for appointment of successor trustee on approval of the Probate Court.
- (2) Bond requirement for all trustees except corporate fiduciaries.
- (3) The requirement of an accounting to the beneficiary, and to the Probate Court if the trust is to be submitted to the Probate Court's jurisdiction.
- (4) A payback provision must be inserted as required by 42 USC 1396(d) (4) (a).
- (5) Notice requirements on termination or death of beneficiary, and for any additions to the trust must be included.
- (6) Dispositive provisions must include disposition to residual beneficiaries after payback required by 42 USC 1396(d) (4) (a). (Eff. 1/1/2005)

## **PART TWENTY MINOR'S CLAIM**

#### **RULE 11.2001**

##### **SETTLEMENT OF MINOR'S CLAIM**

~~The following procedure must be followed in the settlement of the claim of a minor whether by way of compromise, covenant not to sue, or stipulated judgment ("minor's compromise").~~



~~(a)~~ Requests for approval of minor's compromise must be heard on the Probate Calendar.

~~(b)~~ The presence of the minor, the parent or guardian of the minor and counsel must be required unless excused by the Court.

~~(c)~~ Current medical reports, if the matter is applicable to the physical condition of the minor, giving a diagnosis and prognosis of a minor's condition must be attached to the petition or submitted at the hearing. (Amended 1/1/2005)

## **RULE 11.2002**

### **ATTORNEY FEES IN MINOR'S COMPROMISE CASES**

~~(a)~~ A petition to compromise a minor's claim shall contain the following information:

~~1.~~ A brief statement which sets forth the facts which establish liability.  
~~2.~~ A statement which outlines all medical treatment furnished, to date, what future medical, if any, is expected to be required and the nature and extent of any permanent injuries sustained by the minor.

~~3.~~ The total medical expenses incurred by the minor to date and the estimated cost of any anticipated medical attention which will be required in the future.

~~4.~~ A reasonably detailed declaration setting forth all effort expended on behalf of the minor in obtaining the settlement and how it was expended. The declaration should address any or all of the following factors:

~~a)~~ Was the case an obvious liability and policy limits case that just needed processing?

~~b)~~ What was the degree of difficulty involved:

~~c)~~ How much skill was needed and employed?

~~d)~~ How much risk was there of a poor result for the amount of work done?

~~e)~~ How much money did the attorney advance?

~~f)~~ How many hours of work did the attorney do?

~~g)~~ What result was achieved?

~~h)~~ What time elapsed between the work and getting paid the attorneys fees?

~~i)~~ The fact that the attorney's fees is contingent on recovery.

For additional information see Niederer v. Ferriera, [1987] 189 Cal.App.3d 1485.

~~5.~~ Where the injuries (damages) clearly exceed the amount of the insurance policy being offered, the statement shall must also include a recitation of all steps taken to determine if any additional coverage or assets are available from which the minor could seek compensation.

~~6.~~ Any additional information that may be of assistance to the court in determining if the petition should be granted or would assist the court in determining reasonable compensation for the attorney in the case. (Amended 1/1/2005)

(c) Costs.

Allowable costs (CCP 1033.5) paid or incurred by the attorney will ordinarily be deducted from the judgment/settlement prior to computation of fees. (Amended 4/1/1995)

(d) Structured Settlement.

If the petition for approval of a claim under **Section §3500(b)** of the Probate Code relates to a structured settlement calling for future periodic payments, the petition shall must state the cost of the annuity. (Amended 1/1/2005)

## RULE 11.2003

### DISTRIBUTION

(a) If the petition is approved, the Court must direct whether the funds are to be paid to a parent, to a blocked account, or to a general guardian.

(b) If the settlement order provides for a deposit in a blocked account in lieu of appointment of a guardian, the Court must continue the matter on calendar for filed verification of compliance. A personal appearance is mandatory if proof of deposit is not on file Judicial Council forms: MC-355, Order To Deposit Money Into Blocked Account, and MC-356, Receipt And Acknowledgment Of Order For The Deposit Of Money Into Blocked Account are available at the Clerk's Office or can be found on the California Courts website at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov). (Amended 7/1/02)

~~(RULE 11.1003)~~

<del>Assets as per Inventory</del>	<del>\$</del>	<del>_____</del>
<del>Receipts (Schedule A)</del>	<del>\$</del>	<del>_____</del>
<del>Gains on Sales (Schedule B)</del>	<del>\$</del>	<del>_____</del>
<del>Subtotal</del>	<del>\$</del>	<del>_____</del>
<del>Less:</del>		
<del>Losses on Sales (Schedule C)</del>	<del>\$</del>	<del>_____</del>
<del>TOTAL ESTATE ACCOUNTED FOR</del>	<del>\$</del>	<del>_____</del>

### ~~Computation~~

<del>4% on first</del>	<del>\$ 15,000</del>	<del>\$</del>	<del>_____</del>
<del>3% on next</del>	<del>\$ 85,000</del>	<del>\$</del>	<del>_____</del>
<del>2% on next</del>	<del>\$ 900,000</del>	<del>\$</del>	<del>_____</del>
<del>1% on next</del>	<del>\$ 9,000,000</del>	<del>\$</del>	<del>_____</del>
<del>.5% on next</del>	<del>\$15,000,000</del>	<del>\$</del>	<del>_____</del>
<del>In excess of</del>	<del>\$25,000,000</del>	<del>Per Court Order</del>	<del>_____</del>

~~(Repealed 1/1/2005)~~

## RULE 15.00

### APPLICATION FOR EX PARTE ORDER

#### (c) Appointments

Where the matter requires a conference between the applicant or his or her counsel and a judge, before notifying an opposing party of an ex parte request, the applicant must obtain a scheduled appointment with the judge assigned to hear the request. The applicant must call ~~the judge's secretary~~ the following numbers to ~~for the purpose of~~ requesting the an appointment:

~~In Family Law or Probate matters the request must be made to the clerk's office at~~ (805) 781-1373.

Civil (805) 781 5677

Criminal (805) 781 5670

Juvenile (805) 781 5164.

(Amended 1/1/2005)

#### (d) Nonappearance Ex Parte Applications

All nonappearance ex parte applications and orders must be delivered to the clerk's office for presentation to a judge in the regular course of business. The clerk must expedite emergency matters upon request. ~~All applications and orders for appearance ex parte matters must be presented to the superior court secretary in Room 355 on the day and time scheduled for the ex parte hearing.~~ (Amended 1/1/2005)

## **RULE 15.01**

### **TO WHOM PRESENTED**

(c) An application involving an order to show cause in a domestic relations matter must be presented to the assigned judicial officer ~~first to one of the family law commissioners in cases in which he or she is authorized to act and then to the family law presiding judge~~ (Amended 1/1/2005)

## **RULE 16.09**

### **JURY DISTRICTS**

Prospective trial jurors for the Paso Robles and Grover Beach court locations must be summoned from the jury districts of such courts. The jury district for the Paso Robles Court location ~~must be bounded by Justice Court Judicial Districts 1 and 5~~ includes the incorporated areas of Paso Robles and Atascadero, and all other unincorporated areas north of the Cuesta Grade (inland) and all unincorporated areas north of, and including, the community of Cambria; the jury district of the Grover Beach Court location ~~must be bounded by Justice Court Judicial Districts 2 and 3~~ includes the incorporated areas of Pismo Beach, Grover Beach, and Arroyo Grande and all other unincorporated areas south of the Ontario Grade including the community of Avila Beach, the Port San Luis Harbor District, Avila Valley, and Squire Canyon and all unincorporated areas southeast of Price Canyon; provided, however, that nothing shall preclude the exercise of discretion by the jury commissioner in selecting trial jurors when the ~~former justice court judicial~~ jury district boundaries do not physically correspond with the present location of court facilities. The San Luis Obispo Branch must use a county-wide jury panel. (Amended 7/1/01)

## **RULE 19.01**

### **COURT LOCATION**

The Family Law Departments ~~are~~ is located in the ~~on the third floor of the~~ County Government Center at 1035 Palm Street, San Luis Obispo, California. ~~The calendar may be called in any department on assigned dates. Counsel and self-represented litigants should check with the Clerk's Office to ascertain the department hearing family law assignments on a given date. (Amended 7/1/02)~~  
(Amended 1/1/2005)

## **RULE 19.10**

### **APPOINTMENT OF COUNSEL FOR MINORS**

Nothing in these rules must prohibit a court-appointed evaluator from recommending to the court that counsel be appointed to represent the minor child. ~~at any stage of the evaluation pursuant to Family Code Sections commencing at 3150.~~ The recommendation must be made to the ~~presiding~~ assigned Family Law judicial officer with copies of the transmittal letter to each of the attorneys for the parties, or to the parties if they are self-represented. (Amended 1/1/2005)

## **RULE 19.10**

### **APPOINTMENT OF COUNSEL FOR MINORS**

Nothing in this rule must prohibit a court-appointed evaluator from recommending to the court that counsel be appointed to represent the minor child at any stage of the evaluation pursuant to Family Code Sections commencing at 3150. This recommendation must be made to the ~~presiding~~ assigned Family Law judicial officer with

copies of the transmittal letter to each of the attorneys for the parties, or to the parties if they are self-represented. (Amended 1/1/2005)

#### **RULE 27.01**

##### **JURY INSTRUCTIONS**

###### **(a) Proposed Pattern of Jury Instructions**

In jury trials the instruction forms contained in the most recent editions of "[California Jury Instructions-Civil](#)" (BAJI) "[California Approved Civil Instructions](#)" (CACI) and "California Jury Instructions-Criminal" (CALJIC) should be used when applicable. Due consideration will be given to proposed instructions drafted **or submitted** by attorneys as well as the [BAJI](#) [CACI](#) and CALJIC forms.

###### **(d) Method of Filing Proposed Instructions with Trial Judge**

In all jury trials, counsel must present to the court a document setting forth in the usual manner the title of the court, title and number of the action, and title of the document, namely, "Instructions requested by \_\_\_\_." A copy of the document must be served upon each of the other counsel in the case. The document must list by number the [BAJI](#) [CACI](#) and/or CALJIC instructions requested by counsel and counsel must attach to the original the (1) instructions so requested that are in print and available; and if such instructions are modified, by the completion of blanks, the deletion of bracketed material, or in any other manner made complete; (2) if the instructions so requested are not locally available, it will be counsel's responsibility to type such instructions; and (3) the additional instructions, if any, as provided in

### **CHAPTER 29 FAX FILING**

#### **RULE 29.01**

##### **AUTHORITY**

Superior Court of California, County of San Luis Obispo, hereby adopts Title 4, Division VI, Rules 2001 et seq. of the California Rules of Court. The rules in this division are adopted under Code of Civil Procedure Section 1012.5 and the authority granted to the local court by California Rules of Court Rule 2002(b). (Amended 1/1/2005)

#### **RULE 29.02**

##### **APPLICABILITY**

These rules apply to civil (except Small Claims), probate, and family law proceedings in the Superior Court of California, County of San Luis Obispo. (Eff. 7/1/99)

#### **RULE 29.03**

##### **DEFINITIONS**

~~—As used in this division, unless the context requires otherwise:~~

~~—(1) "These rules" means the rules in this division.~~

~~—(2) "A facsimile transmission" means the transmission of a copy of a document by a system that encodes a document into electrical signals, transmits these electrical signals over a telephone line, and reconstructs the signals to print a duplicate of the original document at the receiving end.~~

~~—(3) "A facsimile machine" means a machine that can send a facsimile transmission using the international standard for scanning, coding, and transmission established for Group 3 machines by the Consultative Committee of International Telegraphy and Telephone of the International Telecommunications Union (CCITT), in regular resolution. A facsimile machine used to send documents to a fax filing agency must send~~

~~at an initial transmission speed of no less than 4,800 baud and be able to produce a transmission record.~~

~~—(4) "Facsimile filing" or "filing by fax" means the facsimile transmission of a document to a fax filing agency for filing with the court.~~

~~—(5) "A transmission record" means the document printed by the sending facsimile machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time and date, and an indication of errors, if any, in transmission.~~

~~—(6) "Fax" is an abbreviation for "facsimile" and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.~~

~~—(7) "Fax filing agency" means an entity that receives documents by fax for processing and filing with the court. (Eff. 7/1/92) (Repealed 1/1/2005)~~

## **RULE 29.04**

### **~~COMPLIANCE WITH RULE 201 OF CALIFORNIA RULES OF COURT~~**

~~—The document placed in the transmitting fax machine must comply with Rule 201 of the California Rules of Court and any applicable local rules on the form or format of papers. A document or exhibit which exceeds 8-1/2 x 11 inches must be reduced to 8-1/2 x 11 inches before it is transmitted. (Amended. 7/1/03) (Repealed 1/1/2005)~~

## **RULE 29.05**

### **SIGNATURES**

#### **~~(a) Signed Document~~**

~~—A party who wishes to file a signed document by fax must either (1) fax a copy of the original signed document or (2) fax a copy of the document without the signature but with the notation "/s/" followed by the name of the signing person where the signature appears in the original signed document~~

#### **~~(b) Possession of Original Document~~**

~~—A party who files a signed document by fax using either method in subdivision (a) represents that the original physically signed document is in his/her possession or control.~~

#### **~~(c) Facsimile Signature Constitutes Original Signature~~**

~~—Notwithstanding any provision of law to the contrary, including Sections 255 and 260 of the Evidence Code, a signature produced by facsimile transmission is an original.~~

#### **~~(d) Demand for Original; Waiver~~**

~~—Within 15 days after service of a signed facsimile filing, any other party may serve a demand for production of the original physically signed document. The demand must be served on all other parties but must not be filed with the court. Failure to serve a demand is a waiver of the right to demand production of the physically signed original.~~

#### **~~(e) Examination of Original~~**

~~—If a demand for production of the original physically signed document is made, the parties must arrange a meeting at which the original physically signed document can be examined.~~

#### **~~(f) Order to Produce Original~~**

~~—In the event that the original document is not produced after a timely request therefor, the party may file a noticed motion requesting the court to order the filer of the facsimile produced document to file or produce the original signed document. (Eff. 7/1/92) (Repealed 1/1/2005)~~

## **RULE 29.06**

### **ORIGINAL EXHIBITS**

Each exhibit to a ~~facsimile produced~~ document ~~to be filed by facsimile~~ which cannot be accurately transmitted via facsimile transmission for any reason must be replaced by an insert page describing the exhibit and why it is missing. Unless the court otherwise orders, the missing exhibit must be filed with the court, as a separate document, not later

than five (5) court days following the filing of the facsimile document. Failure to file the missing exhibits as required by this paragraph may result in the court striking the document and/or exhibit. (Eff. 7/1/92)

## **RULE 29.07**

### **FAX FILING AGENCY**

#### **(a) Approved Fax Filing Agencies**

Pursuant to California Rules of Court, Rule 2005, a party may file documents with the Court by using a fax filing agency. ~~The clerk of the court must maintain and provide to interested parties without charge, a list of approved fax filing agencies. Entities or individuals which are licensed shorthand reporters or registered process servers may apply to the court to become approved fax filing agencies, if they meet the following criteria. (Amended 1/1/2005)~~

~~———— (1) ——— The proposed fax filing agency must have available at least one fax machine or computer which is capable of producing facsimile documents on plain number 18# bond (or heavier) paper by laser printer or better quality technique.~~

~~———— (2) ——— The proposed fax filing agency must attempt to have its facsimile machine available on a 24-hour basis, save for reasonable and normal maintenance times.~~

~~———— (3) ——— The proposed fax filing agency must undertake to comply with all rules in this division.~~

#### ~~———— (b) Transmission of Document for Filing~~

~~———— A party may transmit a document by fax to a fax filing agency for filing with the court. The fax filing agency acts as the agent of the filing party and not as an agent of the court.~~

#### ~~———— (c) Duties of Fax Filing Agency~~

~~———— A fax filing agency that receives documents for filing must:~~

~~———— (1) ——— Prepare the document so that it complies with 201 or 501 and any other requirements for filing with the court;~~

~~———— (2) ——— Place the words "filed by fax by" followed by the name of the agency at the bottom of the last page of the document and include thereafter a certification signed by the person who received the facsimile transmission which certifies under penalty of perjury that the document to be filed is the full, complete and unaltered facsimile produced document received;~~

~~———— (3) ——— Take the document to the court;~~

~~———— (4) ——— File the document with the court; and~~

~~———— (5) ——— Pay any applicable filing fee.~~

#### ~~———— (d) Requirement of Advance Arrangements~~

~~———— A fax filing agency must not be required to accept papers for filing unless appropriate arrangements for payment of filing fees and service charges have been made by the transmitting party before the papers are transmitted to the fax filing agency.~~

#### ~~———— (e) Confidentiality~~

~~———— A fax filing agency must keep all documents transmitted to it confidential except as provided in these rules.~~

#### ~~———— (f) Certification by Fax Filing Agency~~

~~———— By filing a document with the court, a fax filing agency certifies that it has complied with these rules and that the document filed is the complete and unaltered facsimile produced document received by that agency. (Eff. 7/1/03) (Repealed 1/1/2005)~~

#### (b) Direct Filing

Unlimited Civil: A party may file by fax directly with the court pursuant to California Rules of Court, rule 2005. Fax filings are made through Official Payments Corporation at 1-800-322-4945. (New 1/1/2005)

**RULE 29.08**

**~~FACSIMILE NOTATION~~**

~~—All facsimile produced documents to be filed with the court must bear the notation "facsimile document" directly above the case number on the first page of the document only. (Eff. 7/1/92)~~ (Repealed 1/1/2005)

**RULE 29.09**

**FAX QUALITY; PLAIN PAPER**

(Repealed 7/1/2003)

**RULE 29.10**

**NO FAX TRANSMITTAL TO COURT**

Facsimile produced documents may not be transmitted for filing directly to any facsimile machine owned or operated by the court or clerk's office. ~~In order to be filed with the court, all facsimile produced documents must be presented for filing at the filing window or by mail. All required fees must be paid at the time of filing~~ (Amended 1/1/2005)

**RULE 29.11**

**~~DOCUMENTS NOT TO BE FILED BY FAX~~**

~~—The following documents will not be accepted for fax filing: original wills and codicils, all types of proposed letters to be issued (i.e., letters of guardianship, conservatorship, and administration), and all bonds and undertakings. (Eff. 7/1/92)~~  
(Repealed 1/1/2005)